

Metro Banking Webinar

Current Financial Case Law and Legislative
Issues to have on Your Team's Radar

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Minnesota Probate Code Change – Affidavit of Collection for Personal Property – Small Estate

- ❑ Increased applicability amount of estate value from \$50,000.00 to \$75,000.00
- ❑ Able to be used by a blood relative to the person who died or a person who has a legal interest in the decedent's property
- ❑ Total assets of estate must be under \$75,000.00
- ❑ Can be used whether or not the person had a Will
- ❑ Property must be listed only in the name of the person who died

Minnesota Probate Code Change – Affidavit of Collection for Personal Property – Small Estate

- ❑ Does not apply to real property
- ❑ 30 days must have passed since the person died
- ❑ Statute provides protection for those who rely upon the Affidavit

Probate Code Changes – Animal Care Trusts

- Law provides for Animal Care Trusts effective August 1, 2016
- For bank purposes, treat similar to any other Trust

Farmer Lender Mediation

- ❑ New exception added which applies if a farmer and lender engage in mandatory mediation and that mediation results in a new line of credit, loan or other debt extended to the farmer by the lender the new agreement is not subject to mandatory mediation for two years from the end of the prior mediation.
- ❑ The minimum amount for mandatory mediation raised from \$5,000.00 to \$15,000.00.

Farmer Lender Mediation

- ❑ The minimum amount for living expenses raised from \$1,600.00 per month to \$3,600.00 per month.
- ❑ Mediation requests must include an authorization from the debtor to obtain the debtor's credit report. The director of the Minnesota Agricultural Extension Services can obtain the debtor's credit report and use that report to determine if the debtor has omitted any creditors. The director can then provide a mediation notice to any omitted creditors.

Farmer Lender Mediation

- Sunset provision pushed back to June 30, 2022.

First-Time Home Buyer Savings Account

- ❑ Allows customers to create a first-time home buyer savings account from which they can pay eligible costs, such as down payments, allowable closing costs, cost of construction, or the financing of construction of a single family residence.
- ❑ Qualified beneficiary or beneficiaries must be a first-time home buyer.
- ❑ The limit for joint filers is \$10,000.00 and \$5,000.00 for all other filers.

First-Time Home Buyer Savings Account

- ❑ The amount contributed to such an account can be deducted from a taxpayer's federal taxable income.
- ❑ Statute provides for a shield for financial institutions who are not required to ensure compliance by determining whether beneficiaries are qualified, modifying financial institution's account contracts, tracking the use of the money, or allocating new funds amongst joint account holders or multiple qualified beneficiaries.

First-Time Home Buyer Savings Account

- Does not require any reporting.

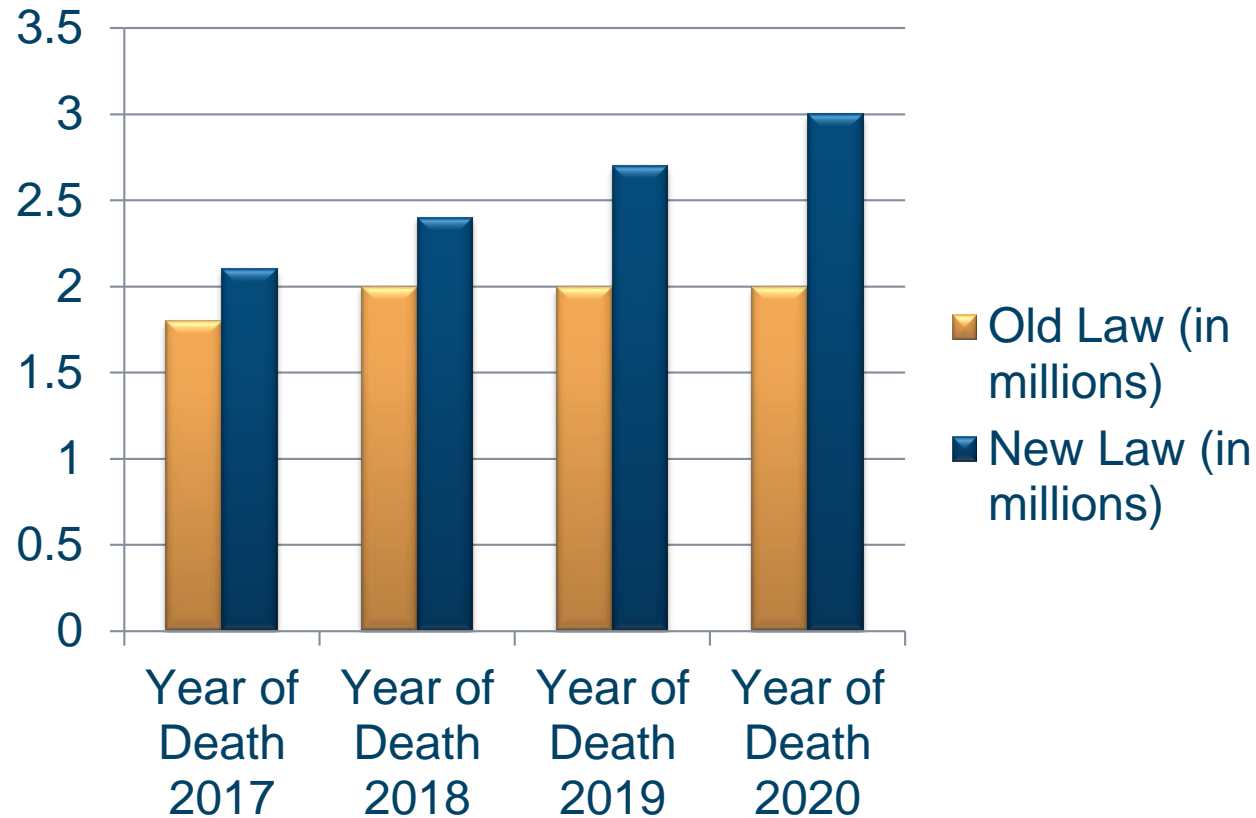
Financial Institution Definition

- Minn. Stat. §290.01, subd. 4(a) expands the list of categories from the three prior definitions: holding companies, regulated financial corporations, and corporations carrying on the business of a financial institution. Nine new categories are now more clearly delineated and will include all traditional bank holding companies, savings and loans, or federal savings banks, amongst others.

Minnesota Estate Tax Exemption Amount

- Pending resolution of the lawsuit between the legislature and the governor, the Minnesota estate tax exemption amounts have changed.

Minnesota Estate Tax Exemption Amount



Minnesota Estate Tax Exemption Amount

- Maximum Minnesota tax rate remains 16%, but minimum rate increased from 10% to 13%.

CFPB Amendment to Mortgage Servicing Rules

- ❑ Interim Rule effective October 19, 2017.
- ❑ Amends Reg X and Reg Z.

CFPB Amendment to Mortgage Servicing Rules

- ▣ Provides servicers a 10-day window to provide a modified written Early Intervention Notice to a borrower who has evoked the cease communication right under the Federal Debt Collection Practices Act. The required modified written Early Intervention Notice must be provided to the borrower on a periodic basis, but not more than once during any 180-day period. Modification provides a 10-day window to provide the notice.

CFPB Pay Day, Vehicle Title, and Certain High-Cost Installment Loan Rule

- Rule applies to two types of covered loans:
 - Short-term loans that have terms of 45 days or less, including short-term vehicle loans that are made for 30-day terms.
 - Longer term loans with terms of more than 45 days that have a cost of credit that exceeds 36% per annum and a form of “leveraged payment mechanism” that gives the lender a right to withdraw payments from the consumer’s account.
 - Excluded are:

CFPB Pay Day, Vehicle Title, and Certain High-Cost Installment Loan Rule

- ❑ Loans extended solely to finance the purchase of a car or other consumer good in which the good secures the loan
- ❑ Home mortgages and other loans secured by real property or a dwelling if recorded or perfected
- ❑ Credit cards
- ❑ Student loans
- ❑ Non-recourse pawn loans
- ❑ Overdraft services and lines of credit
- ❑ Wage advance programs
- ❑ No-cost advances
- ❑ Alternative loans administered by NCUA
- ❑ Accommodation loans

CFPB Pay Day, Vehicle Title, and Certain High-Cost Installment Loan Rule

- ❑ Rule identifies it as an unfair and abusive practice for a lender to make covered short-term—or longer-term—balloon-payment loans without reasonably determining that the consumer will have the ability to repay the loan.
- ❑ Rule completely exempts small dollar accommodation loans made by community banks that make 2,500 or fewer covered loans in each of the current and preceding calendar years if the bank derives no more than 10% of its receipts from those loans.
- ❑ Rule becomes effective 21 months after publication in the federal registrar.

Minnesota Human Rights Act/ADA

- ❑ Minnesota Human Rights Act amended to address lawsuits related to architectural and communication barriers in public accommodations.
- ❑ Law amends the statute of limitations requiring the sending of a demand letter, creates a statutory short form for the demand letter, and provides affirmative defenses for defendants.

Minnesota Human Rights Act/ADA

- Problem is it does not address federal ADA law, which means lawsuits now asserted under federal law and not state law.

Uniform Fiduciary Access to Digital Assets Act

- Provides means for designated fiduciary to access financial assets, digital assets, including electronic communications and account information.
- Custodian compliance and immunity.
 - Not later than 60 days after receipt of required information, a custodian shall comply with the request from a fiduciary or designated recipient to disclose digital assets or terminated account.

Uniform Fiduciary Access to Digital Assets Act

- Custodian may notify the user that a Request for Disclosure to Terminate an Account was made.
- Custodian may deny a request if it is aware of any lawful acts as to the account following the receipt to the fiduciary's request.
- Custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith and compliance with the Act.

Reg Z Dollar Threshold

- ❑ Credit card safe harbor \$27.00 for a first late payment. Subsequent late payments can be \$38.00.
- ❑ HOEPA (Home Ownership and Equity Protection Act) increased threshold amount to \$21,032.00.

Qualified Mortgage Minimums

- Points and fees 3% or less of loans of \$105,158.00.
- \$3,155.00 for loans between \$63,095.00 and \$105,158.00. 5% of loans between \$21,032.00 and \$63,095.00, and 8% of loans less than \$13,145.00.

Department of Justice Fiduciary Rule Delayed Indefinitely for the Current Time

CFPB Ban on Mandatory Arbitration Clauses

- Effective for Credit Card and Financial Account Agreements
- Effective 60 days after publication in federal registrar
- Proposed legislation to prevent enforcement of ban

Questions???

THANK YOU!

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Case Law Update

Thursday, October 26, 2017

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Bankruptcy

Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973
(2017)

- Does a bankruptcy court have the legal power to order a Chapter 11 dismissal that skips higher priority creditors in the distribution of assets in violation of priority rules under the Bankruptcy Code?

Bankruptcy

- *Czyzewski v. Jevic Holding Corp.*
 - No. Without the consent of the affected parties, a bankruptcy court cannot order a Chapter 11 dismissal which deviates from the basic priority rules of the Bankruptcy Code for final distributions of estate value in business bankruptcies.

Bankruptcy

- *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407 (2017)
 - Does a creditor filing a proof of claim that discloses on its face that the claim is barred by the statute of limitations violate the Fair Debt Collection Practices Act?

Bankruptcy

□ *Midland Funding, LLC v. Johnson*

- No, the filing of a proof of claim that is obviously time barred is not a false, deceptive, misleading, unfair, or unconscionable debt collection practice within the meaning of the Fair Debt Collection Practices Act. A claim which is time-barred is not invalid, but rather unenforceable. Filing a valid claim is not false, deceptive, or misleading. Chapter 13 cases pose less risk of a consumer paying time-barred debt than other cases where courts have found that bringing a time-barred claim is unfair or unconscionable.

Creditor's Remedies

- *All Finish Concrete, Inc. v. Erickson*, No. A16-1780, 2017 WL 2836093 (Minn. Ct. App. July 3, 2017).
 - Must a creditor always exhaust all legal remedies before pursuing an equitable action against a debtor to pierce the corporate veil?

Creditor's Remedies

- *All Finish Concrete, Inc. v. Erickson*
 - No. When a creditor alleges that assets legally liable under a judgment have been fraudulently conveyed and seeks to set aside the conveyance under a corporate veil piercing theory, the creditor need not exhaust legal remedies first.

Creditor's Remedies

- *In re Petters Co., Inc.*, 565 B.R. 154 (Bankr. D. Minn. 2017).
 - Does an appointed Trustee have standing to sue a bank that allegedly helped facilitate the Ponzi scheme?

Creditor's Remedies

□ *In re Petters Co., Inc.*

- Yes. The Trustee has standing, because the Trustee has a duty to collect all possible assets of the company declaring bankruptcy, and may pursue derivative claims on behalf of creditors.

Creditor's Remedies

- *In re Hernandez*, 860 F.3d 591 (8th Cir. 2017).
 - When does the six year statute of limitations on a fraud action begin to accrue when someone fraudulently uses a Power of Attorney to sign for loan documents?

Creditor's Remedies

□ *In re Hernandez*

- The statute of limitations begins to run upon discovery of the possibility of fraud – a bank has no duty to investigate the legitimacy of a Power of Attorney at the time a loan is executed.

Creditor's Remedies

- *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718 (2017).
 - Is someone who routinely purchases debts owed and then attempts to collect those debts considered a “debt collector” for purposes of the Federal Fair Debt Collection Practices Act?

Creditor's Remedies

- *Henson v. Santander Consumer USA Inc.*
 - No. A plain language reading of the Act states that a debt collector is one who collects debts that are due to another. When someone purchases the rights to debt owed, they become the owner of the debt. Thus, when they collect, they are collecting debts currently owed to them.

Creditor's Remedies

- *Dusenbery v. Hawks*, 895 N.W.2d 640 (Minn. Ct. App. 2017).
 - Who has first priority in collateral, a perfected UCC security interest or bailee-in-possession?

Creditor's Remedies

□ *Dusenbery v. Hawks*

- A party in possession with a statutory lien has priority over all security interests, regardless of date of filing, unless the statute creating the lien “expressly provides otherwise.” Minn. Stat. § 336.9-333(b) (2016).

Creditor's Remedies

- *Discover Bank v. Blake*, A17-0358 (Minn. Ct. App. Aug. 14, 2017).
 - When a settlement offer is internally inconsistent, does the debtor's act of acceptance create a binding contract?

Creditor's Remedies

□ *Discover Bank v. Blake*

- No. When an offer is “too good to be true” the offeree has a duty to inquire before acceptance will be valid.

Mortgages

- *The Bank of New York Mellon v. Westrom*, No. A16-0116, 2017 WL 74304 (Minn. Ct. App. Jan. 9, 2017).
 - Will a later ratification of an invalid mortgage create a valid mortgage after the ratification?

Mortgages

- *The Bank of New York Mellon v. Westrom*
 - Yes. There is no legal difference between the terms “ratify”, “adopt”, and “confirm” as applied to mortgages. By signing the new signature page in 2011, the Westroms ratified the mortgage, and it was valid thereafter.

Mortgages

- *Leeco, Inc. v. Cornerstone Bank*, No. A16-1875, 2017 WL 2836097 (Minn. Ct. App. July 3, 2017).
 - Should property sold pursuant to a foreclosure action be sold as separate tracts when it is divided in to more than one separate tax identification parcels?

□ *Leeco, Inc. v. Cornerstone Bank*

- Not necessarily. “In determining whether a property consists of separate and distinct tracts, a court should consider ‘[t]he object with which a body of land is held by the owner or occupant’ and ‘the manner of its use.’ In addition, a court should interpret the statute to ensure that ‘the mortgaged property shall be so disposed of as to bring the best price possible, consistently with the preservation of the rights of the mortgagee.’”

Mortgages

- *U.S. Bank Nat'l Ass'n v. RBP Realty, LLC*, 888 N.W.2d 699 (Minn. Ct. App. 2016)
 - Is a borrower's waiver of the statutory right to redeem foreclosed property in a foreclosure by advertisement enforceable?

Mortgages

- *U.S. Bank Nat'l Ass'n v. RBP Realty, LLC*
 - No. Minn. Stat. Chapter 580 created a six-month right of redemption period that was altered in only a few circumstances. None of those circumstances included a private agreement between the borrower and lender. Because no statute expressly allowed for the waiver of a borrower's right to redemption, any such waiver is unenforceable under Minnesota law.

Questions???

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